

Internal Revenue Service

Number: **200724014**

Release Date: 6/15/2007

Index Number: 9100.22-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B06

PLR-143748-06

Date:

March 12, 2007

Re: Request for Extension of Time to File Request for Revised Schedule of Ruling
Amounts Under 468A

Taxpayer =

Plant =

Location =

Commission =

Order =

Method =

Fund =

Dear :

This letter responds to a letter submitted September 13, 2006, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file a request for a revised schedule of ruling amounts for purposes of § 468A of the Internal Revenue Code.

According to the information submitted, Taxpayer is the owner of Plant. Taxpayer is primarily engaged in the generation and sale of electricity at wholesale. Taxpayer owns a percent interest in the Plant.

Taxpayer has established a qualified fund with respect to the Unit as allowed by section 468A of the Internal Revenue Code. The Commission determined the amount of decommissioning costs to be included in the cost of service for ratemaking purposes

for taxable years beginning _____ taxable year, using a formula, in Order. The Taxpayer requested, by letter dated March 14, 2002, a revised schedule of ruling amounts from the Service for tax years _____ as a result of Order. The Service issued the revised schedule of ruling amounts by letter dated _____. For tax years _____, the amount of decommissioning costs to be included in the cost of service was to be determined by reference to the amount of energy produced by the Unit and purchased by _____.

On _____, Commission issued a modification of Order, clarifying the formula to be used to determine the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. This clarification resulted in a substantial variation (as defined in § 1.468A-3(i)(1)(ii)(A)) in the ruling amount determined under the formula approved originally by letter dated _____, and again by letter dated _____ for tax years _____. As required by section 1.468A-3(i)(1) of the Income Tax regulations, the Taxpayer requested, by letter dated March 9, 2006, a revised schedule of ruling amounts for the _____ and _____ tax years. The revised schedule was issued by the Service by letter dated _____. In connection with the review of the total decommissioning cost recovery for the Unit for the _____ tax year, the Taxpayer became aware that a revised schedule of ruling amounts should have also been sought for the _____ tax year. Under § 1.468A-3(i)(1)(ii)(A), the request for a revised schedule of ruling amounts should have been submitted to the Service no later than the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method.

The amount of decommissioning costs actually included in the cost of service for _____ was \$ _____. Under the revised formula provided by the Commission, the amount that would have been included in the cost of service for purposes of § 468A under a timely-filed request for a revised schedule of ruling amounts would have been \$ _____. Taxpayer paid the lesser amount into the qualified fund for _____. Taxpayer represents that, during _____, it experienced changes in personnel in its tax department that resulted in the accidental failure to timely request a revised schedule of ruling amounts as required.

LAW AND ANALYSIS

Section 468A provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, former § 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

Section 468A(g) provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of a taxable year if the payment is made on account of such taxable year and is made within 2 ½ months after the close of the tax year.

Section 1.468A-3(a)(1) provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the "amount of decommissioning costs allocable to the fund".

Section 1.468A-3(i)(1)(ii) provides that any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved, or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

Section 1.468A-3(i)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(h). The Internal Revenue Service shall not provide a revised schedule of ruling amounts applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. A request for relief under § 301.9100-3 will be granted

when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's request for a revised schedule of ruling amounts will be considered timely filed for purposes of § 1.468A-3(i)(1)(ii)(A). This relief is intended only to address the technical violation under § 1.468A-3(i)(1)(ii)(A). Since the statutory deemed payment deadline for the tax year has passed, Taxpayer will not be permitted to make any further contributions for the tax year.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code.

We are sending a copy of this letter to the Director.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes